

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 04-1081

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Kenneth Royal,

Appellant,

v.

Young, Dr., Pine Bluff Work Complex,  
ADC; Taylor, Dr., Pine Bluff Work  
Complex, ADC; Chang Lee, Dr., East  
Arkansas Regional Unit, ADC;  
Hartman, Dr., North Central Unit,  
ADC; Cherry Case, Manager, North  
Central Unit, ADC; Curddle, Nurse,  
North Central Unit, ADC,

Appellees.

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Appeal from the United States  
District Court for the Eastern  
District of Arkansas.

[UNPUBLISHED]

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Submitted: May 7, 2004

Filed: May 17, 2004

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Before MORRIS SHEPPARD ARNOLD, FAGG, and SMITH, Circuit Judges.

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PER CURIAM.

Former Arkansas inmate Kenneth Royal appeals the district court's\* preservice dismissal without prejudice of Royal's 42 U.S.C. § 1983 action for failure to exhaust his administrative remedies. The dismissal occurred after Royal moved for dismissal without prejudice and for transfer to a state court, a transfer the district court lacked authority to grant. Because there is no arguable basis for Royal's appeal, see Newhouse v. McCormick & Co., 130 F.3d 302, 305 (8th Cir. 1997) (defining frivolousness), we dismiss this appeal as frivolous, and the dismissal counts as a “strike” for purposes of 28 U.S.C. § 1915(g).

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\*The Honorable William R. Wilson, Jr., United States District Judge for the Eastern District of Arkansas.